

Departmental Disclosure Statement

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| Environment Canterbury (Transitional Governance Arrangements) Bill |
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Ministry for the Environment and Department of Internal Affairs.

The Ministry for the Environment and the Department of Internal Affairs certifies that, to the best of their knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

21 August 2015

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Part One: General Policy Statement

Purpose

The Environment Canterbury (Transitional Governance Arrangements) Bill establishes a mixed-model governance structure for the Canterbury Regional Council (Environment Canterbury) for the transition period during the 2016–2019 local government term. This Bill will facilitate the continued timely development of a robust, clear, and effective framework for the management of natural resources—particularly fresh water and nutrient management—in Canterbury.

The Bill will also ensure that the Canterbury region is supported by a well-functioning regional council with appropriate systems, structures, and capacity as a transitional measure to facilitate a return to a standard, fully elected, regional council in 2019.

Provisions relating to the new mixed-model governance body

The Bill will provide for a mix of 7 councillors to be elected from 4 constituencies across Canterbury communities, and the appointment of up to 6 councillors by the Government. Together these elected and appointed members will form the governing body of Environment Canterbury during the transition period, to ensure a capable and stable governing body with specialist expertise to continue work in fresh water management.

The Bill will provide for the Government to appoint members who complement the skills of the members elected by the Canterbury communities. To that end, it will provide for the Government to make appointments within 28 days after the local election results are officially declared.

The Bill will provide that all members, whether elected or appointed, will have their remuneration set by the Remuneration Authority in the same way that the Authority determines remuneration for all standard regional councils. To ensure that the region is not left without a governing body if there is a delay in appointments, the Bill will provide for the elected members to make decisions in the event of an emergency.

The Bill provides that the term of the mixed-model governance body will end on the day after the day on which the official election result is declared for the full council following the 2019 local government election.

Provisions relating to alternative Resource Management Act 1991 processes that apply to the mixed-model governance body

The Bill will carry forward the limitation on appeal rights from the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (the 2010 Act). To achieve this, the Bill provides that appeals can only be made by certain individuals to the High Court on points of law during the process of approving regional plans and regional policy statements applicable to the management of fresh water in Canterbury. The Bill provides that this power will end on resumption day in 2019 unless continued for the purposes of completing a decision.

Provisions repealing other powers and processes

The Bill will repeal the provisions in the 2010 Act that gave Environment Canterbury additional powers to make moratoria on resource consents. It will also repeal most of the special processes in the 2010 Act that allow Environment Canterbury to consider water conservation order applications, instead of a ministerial-appointed special tribunal as is the status quo under Part 9 of the Resource Management Act 1991 (the RMA).

However, to ensure there is clarity for applicants about what process their water conservation order application will follow, the Bill contains a number of transitional clauses for these applications. Applications that have reached hearing stage by transition day will continue under the 2010 Act process. All other applications will be dealt with under Part 9 of the RMA.

Part Two: Background Material and Policy Information

Published reviews or evaluations

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| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | YES |
| <p><i>Investigation of the Performance of Environment Canterbury under the Resource Management Act and Local Government Act</i>, Creech, W., Jenkins M., Hill, G. and Low, M. (February 2010)</p> <p>This report informed the policy development given effect to by the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010. This report was considered, but was not crucial to the policy development to be given effect to by this Bill.</p> <p>A copy of the report is available on the Ministry for the Environment website at http://www.mfe.govt.nz/sites/default/files/investigation-performance-environment-canterbury.pdf</p> | |

Relevant international treaties

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| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
| 2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty? | NO |

Regulatory impact analysis

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| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
| <p><i>Regulatory Impact Statement Environment Canterbury Governance Arrangement</i>, Ministry for the Environment and Department of Internal Affairs (May 2015)</p> <p>A copy of the RIS is available on the Treasury website and the Ministry for the Environment website at http://www.mfe.govt.nz/node/20907</p> | |
| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | YES |
| <p>The RIA Team in the Treasury considered that the information and analysis provided in the RIA partially meets the quality assurance criteria and provided the following statement:</p> <p><i>“The objectives for reform contain clear trade-offs between perceptions of efficiency and environmental stewardship, and local democratic accountability. These are difficult to balance without objective information about previous and potential regulatory outcomes, so the assessment of options largely relies on subjective valuations. The fact that no alternative options were consulted on, and that proposals from stakeholders have received limited consideration, suggests that the full range of feasible options has not been examined.”</i></p> | |

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| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | NO |
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Extent of impact analysis available

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| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
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| 2.5. For the policy to be given effect by this Bill, is there analysis available on: | |
| (a) the size of the potential costs and benefits? | NO |
| (b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth? | NO |

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| 2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by: | |
| (a) the level of effective compliance or non-compliance with applicable obligations or standards? | NO |
| (b) the nature and level of regulator effort put into encouraging or securing compliance? | NO |

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

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| 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations? |
| None. We did not consider that the policy behind the Bill materially impacts on New Zealand's international obligations. |

Consistency with the government's Treaty of Waitangi obligations

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| 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi? |
| Te Rūnanga o Ngāi Tahu were consulted during the policy development and given the opportunity to make a formal submission on the proposed policies. |
| The Bill requires the councillors to collectively have knowledge of tikanga Māori, as it applies in the Canterbury region (clause 11(2)). |

Consistency with the New Zealand Bill of Rights Act 1990

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| 3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990? | YES |
| Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-right | |

Offences, penalties and court jurisdictions

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| 3.4. Does this Bill create, amend, or remove: | |
| (a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)? | NO |
| (b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)? | YES |
| The Bill limits rights of appeal in relation to decisions made by Environment Canterbury on proposed plans and regional policy statements that are consistent with the Canterbury Water Management Strategy. The Bill removes a right to make submissions (appeals) to the Environment Court and limits appeals to the High Court on points of law only. | |

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| 3.4.1. Was the Ministry of Justice consulted about these provisions? | YES |
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Privacy issues

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| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | NO |
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| 3.5.1. Was the Privacy Commissioner consulted about these provisions? | N/A |
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External consultation

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| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | YES |
| <p>Prior to Bill drafting, the responsible Ministers held meetings in Canterbury with all Canterbury District and City Councils and the local iwi, Ngāi Tahu, to discuss the proposed mixed model governance structure. A discussion document, which outlined the Government's proposal to introduce a mixed model governance structure for Environment Canterbury, was publicly released in March 2015, inviting public submissions. A copy of the discussion document is available on the Ministry for the Environment at http://www.mfe.govt.nz/publications/rma/environment-canterbury-review-discussion-document.</p> <p>The submissions received on the discussion document informed the development of the policy given effect to in this Bill. A submissions report is available on the Ministry for the Environment website at http://www.mfe.govt.nz/publications/rma/summary-submissions-environment-canterbury-review-discussion-document.</p> <p>The Environment Canterbury Commissioners were consulted on a draft of this Bill on 6 August 2015.</p> | |

Other testing of proposals

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| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | YES |
| <p>Some of the processes and functions of the mixed model governance structure set out in the Bill are carried over from the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010. Specifically, the concept of the Council being led by Government-appointed council members has been tested over the past six years under the current Commissioner-led model and proved successful. The limitation on appeal rights applying to the process for making and amending regional plans and regional policy statements has also been in place for the past 6 years and has contributed to faster development and completion of the key planning documents affecting fresh water in Canterbury.</p> <p>In addition, the provisions in the Bill replicate, to the extent possible, many of the key Local Government Act 2002 provisions applying to standard regional councils elsewhere in New Zealand. The appointed members of the new council will operate together with the elected members and together they will govern in accordance with the LGA provisions.</p> | |

Part Four: Significant Legislative Features

Compulsory acquisition of private property

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| 4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property? | NO |
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Charges in the nature of a tax

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| 4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax? | NO |
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Retrospective effect

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| 4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively? | NO |
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Strict liability or reversal of the usual burden of proof for offences

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| 4.4. Does this Bill: | |
| (a) create or amend a strict or absolute liability offence? | NO |
| (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding? | NO |

Civil or criminal immunity

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| 4.5. Does this Bill create or amend a civil or criminal immunity for any person? | NO |
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Significant decision-making powers

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| 4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests? | NO |
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Powers to make delegated legislation

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| 4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation? | NO |
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| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | NO |
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Any other unusual provisions or features

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| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | YES |
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| Part and title | Nature and purpose | Why the clause is necessary |
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| Part 2- Governance arrangements during the transition period | The mixed model governance structure will require special arrangements to ensure a smooth transition from the current Commissioner-led model. | <p>Part 2 strikes a balance between the local democracy and accountability and strong environmental stewardship by providing for a mix of elected and appointed councillors at ECan. This varies from the standard governance structures for regional councils.</p> <p>Part 2 also clarifies the processes that will be carried out during the transition period, including: the appointment/ election processes; the timing of entry into office by the appointed and elected councillors; and who has decision-making responsibility during the transition period.</p> |
| Part 3- Resource Management Act arrangements during the transition period | <p>The mixed model governance structure will retain some of the special resource management powers that exist under the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.</p> <p>To ensure continuity and consistency of processes (including to allow for rules to be finalised in each of the zones of the Canterbury Land and Water Regional Plan) appeals on development of new, or amendment of existing, regional plan and regional policy statements are limited to points of law to the High Court only.</p> <p>Though the substance of the special resource management powers that enabled the Commissioners to impose moratoria on water takes and consider water conservation order (WCO) applications in the 2010 Act are repealed in Part 4 of the Bill, Part 3 contains some transitional clauses to ensure there are clear processes to follow for water conservation order applications under consideration at transition day.</p> | <p>Part 3 allows the special resource management powers relating to limited appeal rights to carry over from the 2010 Act. It is necessary to set this out explicitly because the process is different to the status quo in Part 9 of the RMA.</p> <p>Clauses 19 and 23 of the Bill narrow the scope of limited appeal rights so that the limitations are no wider than is necessary to finalise the setting of water allocation and nutrient limits in each of the zones.</p> <p>Part 3 allows applicants for Water Conservation Orders which are at hearing stage by transition day to have the benefit of the process under which they commenced their application. Part 3 also contains clauses that set out a clear process for the completion of other applications.</p> |